IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROJECT MANAGEMENT INSTITUTE, INC. and HAROLD REEVE, Plaintiffs, v. LEWIS R. IRELAND and LEWIS R. IRELAND & ASSOC., INC., Defendants.	: : : : : : : :	CIVIL ACTION NO. 99-4891

Memorandum and Order

YOHN, J. April , 2000

Lewis R. Ireland ("Ireland") is a former President of the Board of Directors of Project Management Institute, Inc. ("PMI"). While serving in that capacity, Ireland developed concerns about the quality of legal work being done by PMI counsel Richard A. Goldberg, Esq. ("Goldberg"). Ireland, feeling that his concerns were not being resolved satisfactorily, sent allegedly defamatory correspondence to other board members, including Harold Reeve ("Reeve"), Chair of PMI's board. When PMI threatened to remove Ireland from his position on the board and to revoke his membership, Ireland signed an agreement not to pursue his allegations further. He renewed his correspondence shortly thereafter, allegedly continuing to publish defamatory statements to and about Reeve, including statements to Reeve's employer and government agencies. Plaintiffs filed suit. Defendants responded by filing a motion pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(f) to dismiss the action in part and

to strike matter from the complaint. That motion, and plaintiffs' response thereto, is before the court. I will grant in part and deny in part the motion.

BACKGROUND

Taking the facts from plaintiffs'[1] complaint and the exhibits attached thereto,[2] the facts are the following.

PMI defines standards for project managers, certifies professional project managers, and offers educational programs. *See* Compl. ¶ 8 (Doc. No. 1). PMI is a non-profit professional association of which professionals may be members. *See id.* A board of directors governs PMI. *See id.* ¶ 10. In 1998, Ireland served as both President and Chair of the board, which entailed, among other things, review of "legal documents and letters issued by PMI." *See id.* ¶ 11. At all material times, Goldberg was serving as legal counsel to PMI. *See id.* ¶¶ 13 & 42. On December 28, 1998, Ireland wrote a letter directing PMI Executive Director Virgil Carter ("Carter") to terminate PMI's contract with Goldberg. *See id.* ¶ 24. The letter alleged four grounds for the action. *See id.* ¶¶ 25-33. The letter was sent to thirteen other individuals, each a past or present director of PMI. *See id.* ¶ 34. Plaintiffs allege that Ireland lacked the authority to issue the order. *See id.* ¶¶ 36-37. Ireland also communicated the substance of the letter to Reeve, as incoming Chair, by e-mail of January 1, 1999. *See id.* ¶ 39.

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[1] Although Counts I and VI of the complaint are brought on behalf of only one of the two plaintiffs, all references herein will be to plaintiffs jointly. I do this only for convenience. I neither express nor imply a finding of fact or conclusion of law.

[2] *See infra,* Part II.A.

An Executive Committee met on January 14, 1999 to review the allegations. *See id.* ¶ 41. Finding the allegations without merit, the Executive Committee "voted to retain Attorney Goldberg and his law firm as PMI's General Counsel." *See id.* ¶ 42.

On January 19, 1999, Ireland circulated to the Executive Committee a second letter containing allegations of improper conduct by both Goldberg and Carter. *See id.* ¶¶ 44-45. The same allegations were communicated to the Executive Committee by Ireland in a February 1, 1999 e-mail. *See id.* ¶ 48. On March 13, 1999, Reeve and other board members informed Ireland "that if he did not agree to immediately halt his attacks on Messrs. Goldberg and Carter, the Board could seek to remove him as a member of the Board of Directors and revoke his membership in the association." *See id.* ¶ 51. In exchange for valid consideration, Ireland signed an "Agreement Not to Pursue" his allegations. *See id.* ¶ 52; *id.* Ex. I. On April 12, 1999, Ireland resigned voluntarily from the board. *See id.* ¶ 55.

On May 6, 1999, Reeve requested by letter that Ireland retract his allegations. *See id.* ¶ 56. On May 26, 1999, Ireland sent an e-mail to Reeve's employer charging Reeve with improper conduct and suggesting as well that Reeve's employer might be liable. *See id.* ¶¶ 57-58; *id.* Ex. K. On June 2, 1999, Ireland sent a letter to the vice president of human resources at Reeve's employer, renewing his questions and allegations as to Reeve. *See id.* ¶ 60; *id.* Ex. L. With the intent to harass and defame Reeve and PMI, Ireland submitted a Freedom of Information Act request to the Department of Energy for records regarding Reeve. *See id.* ¶ 62.

On July 6, 1999, Ireland sent an e-mail to the PMI board in which he threatened to "continue to escalate these issues." *See id.* ¶ 64; *id.* Ex. M. On August 17, 1999, Ireland sent an e-mail to the board accusing "PMI of violating its bylaws and Pennsylvania law." *See id.* ¶ 65;

id. Ex. N. On August 19, 1999, Ireland sent an e-mail to the vice chair of PMI's board accusing "Plaintiffs of 'extortion' and [saying that] he had initiated a 'criminal investigation' against Plaintiffs." *See id.* ¶¶ 66-67. On August 26, 1999, Ireland sent an e-mail to a PMI board member saying that "he had met with agents of the Federal Bureau of Investigation ('FBI')" and that he would "meet with them again if Plaintiffs failed to" do as he asked. *See id.* ¶ 69; *id.* Ex. P. Plaintiffs say that Ireland was "aided and encouraged in his efforts" by Lewis R. Ireland & Associates, Inc. ("Ireland Associates").

On September 30, 1999, plaintiffs filed a complaint in eight counts seeking legal and equitable relief from defendants.[3] *See* Doc. No. 1. On November 23, 1999, defendants filed a motion to strike portions of the complaint pursuant to Fed. R. Civ. P. 12(f) and to dismiss in part the action pursuant to Fed. R. Civ. P. 12(b)(6). *See* Defs. Mot. to Strike and Mot. to Dismiss Pls. Compl. (Doc. No. 4) (hereafter "Defs. Mot."). Plaintiffs filed a response to the motion on December 15, 1999. *See* Pls. Resp. in Opp'n to Defs.' Mot. (Doc. No. 7) (hereafter "Pls. Resp."). For the reasons which follow, I will grant in part and deny in part the Rule 12(f) motion. Also, I will grant in part and deny in part the Rule 12(b)(6) motion.

[3] Although not all counts of the complaint are against both defendants, all references herein will be to defendants jointly. I do this only for convenience. I neither express nor imply a finding of fact or conclusion of law.

DISCUSSION

I. MOTIONS TO STRIKE MATTER FROM THE COMPLAINT

Plaintiffs move to strike both scandalous matter and the ad damnum clauses from the complaint.

A. Rule 12(f) Motion to Strike Scandalous Language From the Complaint

Rule 12(f) permits a court to "order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." *See* Fed. R. Civ. P. 12(f). Defendants move for the court to strike as scandalous allegations such as that characterizing Ireland's actions as "nothing more than a personal vendetta held by a delusional, paranoid and destructive person." *See* Defs. Mot. at 3 (quoting Compl. ¶ 50). Plaintiffs argue that defendants must identify the statements to be stricken, that the language is not scandalous, and that defendants have not demonstrated prejudice from the language of the complaint. *See* Pls. Resp. at 11-14. I will deny the motion for lack of prejudice.

A Rule 12(f) motion to strike matter from a pleading is disfavored generally. *See, e.g.*, *Miller v. Group Voyagers*, Inc., 912 F. Supp. 164, 168 (E.D. Pa. 1996); *North Penn Transfer, Inc., v. Victaulic Co. of Amer.*, 859 F. Supp. 154, 158 (E.D. Pa. 1994); *Great West Life Assur. Co. v. Levithan*, 834 F. Supp. 858, 864 (E.D. Pa. 1993); Charles A. Wright et al., Federal Practice and Procedure § 1380 at 647 (2d ed. 1995) [hereafter "Fed. Prac. & P."]. For that reason, courts

have required the moving party to demonstrate prejudice in order to justify an order to strike matter from a pleading. *See, e.g.*, *Miller*, 912 F. Supp. at 168; *North Penn Transfer, Inc.*, 859 F. Supp. at 158; *Great West Life Assur. Co.*, 834 F. Supp. at 864; Fed. Prac. & P. § 1382 at 682.

Defendants have not alleged any prejudice due to the cited language. Moreover, if the action proceeds to trial, the pleadings will not be presented to a jury. That being so, and because the court is able to limit its analysis to the the legally relevant allegations in the complaint, I conclude that defendants will suffer no prejudice from the language cited and I will deny the motion to strike scandalous matter. *See Hanania v. Loren-Maltese*, 56 F. Supp. 2d 1010, 1019 (N.D. Ill. 1999); Fed. Prac. & P. § 1382 at 715.

B. Motion to Strike Dollar Amounts Claimed in Ad Damnum Clauses

Pursuant to each of the eight counts in the complaint, plaintiffs request relief in the form of "compensatory and punitive damages in an amount in excess of one million dollars ($1,000,000)." *See, e.g.*, Compl. (c) following ¶ 131 at 32. Defendants argue that such demands are improper under Local Civil Rule 5.1.1, which provides:

> No pleading asserting a claim for unliquidated damages shall contain any allegation as to the specific dollar amount claimed, but such pleadings shall contain allegations sufficient to establish the jurisdiction of the Court, to reveal whether the case is or is not subject to arbitration under Local Civil Rule 53.2, and to specify the nature of the damages claimed.

See E.D. Pa. Loc. R. Civ. P. 5.1.1. Defendants argue that Local Civil Rule 5.1.1, in tandem with Federal Civil Rule 12(f), permits the court to strike the specific dollar amounts claimed. Plaintiffs respond that defendants' argument is "hyper-technical" and that defendants have not

demonstrated prejudice from any specific claim. *See* Pls. Resp. at 14. Plaintiffs are wrong.

Courts in this district have enforced the requirement of Local Civil Rule 5.1.1. *See, e.g.*, *Pryor v. Mercy Med. Ctr.*, No. 99-0988, 1999 U.S. Dist. Lexis 16084, at *5 n.3 (E.D. Pa. Oct. 19, 1999); *Gallas v. Supreme Ct. of Pa.*, No. 96-6450, 1997 U.S. Dist. Lexis 6893, at *68 (E.D. Pa. May 16, 1997). Because Local Civil Rule 5.1.1 was enacted out of concern for the possibility of prejudice, defendants need not show actual prejudice. *See Christian v. Loblaw Brands Ltd.*, No. 95-1823, 1995 U.S. Dist. Lexis 15301, at *5 (E.D. Pa. Oct. 13, 1995). Therefore, I will grant defendants' motion to strike specific dollar amounts claimed in the complaint.

II. MOTION TO DISMISS THE ACTION PURSUANT TO RULE 12(b)(6)

A. Standard of Review for Rule 12(b)(6) Motions

Pursuant to Rule 12(b)(6), the court may dismiss a claim for "failure to state a claim upon which relief can be granted." *See* Fed. R. Civ. P. 12 (b)(6). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *See Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir. 1987). In deciding a motion to dismiss, the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994) (citing *Rocks v. Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989)). At this stage of the litigation, "[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations."

Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Documentary exhibits attached to the complaint become part of the pleadings and must be considered in reviewing a motion to dismiss. *See ALA, Inc. v. CCAIR, Inc.*, 29 F.3d 855, 859 (3d Cir. 1994); *Rose v. Bartle*, 871 F.2d 331, 339-40 n.3 (3d Cir. 1989); Fed. Prac. & Proc. § 1327 at 764-65 & 768.

B. Counts I and VII: Commercial Defamation and Negligent Defamation

In Count I, PMI seeks relief from defendants for "defamatory publications . . . to third parties." *See* Compl. ¶ 83. In Count VII, both PMI and Reeve seek relief from defendants for negligently causing "false and/or defamatory statements about Plaintiffs to be" published to third parties.[4] *See id.* ¶ 120. Defendants characterize both as claims for "trade disparagement" and seek to dismiss Counts I and VII because the alleged statements are "not disparaging as a matter of law." *See* Defs. Mot. at 4. Plaintiffs respond that the claims are for defamation, not commercial disparagement. I agree.

The Third Circuit has explained:

> The distinction between actions for defamation and disparagement turns on the harm towards which each is directed. An action for commercial disparagement is meant to compensate a vendor for pecuniary loss suffered because statements attacking the quality of his goods have reduced their marketability, while defamation is meant to protect an entity's interest in character and reputation.

See U.S. Healthcare, Inc. v. Blue Cross of Greater Phila., 898 F.2d 914, 924 (3d Cir. 1990). Because Count I is titled "Commercial Defamation" and demands relief for injury to reputation

[4] In Count II, Reeve seeks relief from defendants for defamation. *See* Compl. ¶¶ 91-96. Defendants have not moved to dismiss that count.

due to defamatory publication, it is fairly characterized as a defamation claim. Similarly, Count VII seeks relief from "defamatory statements concerning plaintiffs," *see* Compl. ¶ 120, and compensation for "injury to [plaintiffs'] reputations" *see id.* ¶ 121. That being so, defendants arguments are unavailing.

A disparaging statement is one intended "to cast doubt upon the existence or extent of another's property in land, chattels or intangible things, or upon their quality." *See U.S. Healthcare, Inc.*, 898 F.2d at 924. A plaintiff alleging defamation need not plead disparaging statements. Rather, a defamation plaintiff must plead and ultimately prove a defamatory statement, which is "one that 'tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.'" *See U.S. Healthcare, Inc.*, 898 F.2d at 923 (quoting *Birl v. Philadelphia Elec. Co.*, 167 A.2d 472, 475 (Pa. 1960)). Defendants do not allege that plaintiffs have failed in this regard. Therefore, I will deny defendants' motion to dismiss Counts I and VII without prejudice to their right to challenge those counts on a motion for summary judgment.[5]

C. Counts III, IV, V, and VIII: Breach of Contract, Specific Performance, Tortious Interference, and Injunctive Relief

In Count III, plaintiffs seek relief against Ireland due to his alleged breach of the March

[5] First, in so doing I offer no conclusion as to the adequacy of plaintiffs' defamation claims. I only determine that they have not been controverted. Second, I offer no conclusion as to whether plaintiffs must prove special damages in a libel action, *see* Pls. Resp. at 18-19, or whether plaintiffs need not prove special damages because they will prove slander per se, *see* Pls. Resp. at 19-20.

13, 1999 "Agreement Not to Pursue." *See* Compl. ¶ 99. In Count IV, plaintiffs seek to compel Ireland to specifically perform the Agreement. *See* Compl. ¶¶ 107-108. In Count V, plaintiffs seek relief from Ireland Associates for tortious interference with the Agreement. *See id.* ¶ 110. Finally, in Count VIII, plaintiffs request preliminary and permanent injunctions ordering Ireland to comply with the terms of the Agreement. *See id.* ¶ 131.

1. Valid and Binding Contract

Defendants argue that each of plaintiffs' claims depends on the existence of a valid and binding contract. The formation of a binding contract requires offer, acceptance, mutual assent, and consideration. *See ATACS Corp. v. Trans World Communs., Inc.*, 155 F.3d 659, 665 (3d Cir. 1998); *Yarnall v. Almy*, 703 A.2d 535, 539 (Pa. Super. Ct. 1997).

Defendants argue that plaintiffs are not parties to the agreement. *See* Defs. Mot. at 6. Under Pennsylvania law,[6] the signatures of the contracting parties are not necessary to form a binding contract, even one intended to be reduced to writing, unless signatures are required by law or by agreement of the parties. *See Flight Sys., Inc. v. Electronic Data Sys. Corp.*, 112 F.3d 124, 129-30 (3d Cir. 1997); *Shovel Transfer & Storage Inc. v. Pennsylvania Liquor Control Bd.*, 739 A.2d 133, 136 (Pa. 1999). Plaintiffs have alleged that "members of the Board, including Chair Reeve" sought an agreement from Ireland that he would not pursue his allegations. *See* Compl. ¶ 51-52. Although it remains to be done, plaintiffs could prove that both PMI as an

[6] The parties cite law in Pennsylvania as controlling and dispositive. Therefore, I apply Pennsylvania law as impliedly agreed by the parties.

organization and Reeve as an individual formed a binding contract with defendants. *See ATACS Corp.*, 155 F.3d at 665.

Defendants also argue that the contract is not supported by consideration and lacks a "specific, definite promise" enforceable against plaintiffs. *See* Defs. Mot. at 7. Whether that is so remains to be proven by plaintiffs. Plaintiffs have alleged that "[Ireland] signed an agreement, entitled 'Agreement Not to Pursue' . . . in exchange for valid consideration." *See* Compl. ¶ 52. A reasonable inference from that language is that the written agreement does not contain the complete terms of the contract between the parties but rather only the promise which defendants offered in exchange for some other definite and enforceable promise. Also, plaintiffs have averred facts sufficient to permit an inference that Ireland signed the agreement in exchange for a promise not to remove him from the board and the organization. *See* Compl. ¶ 51. Although plaintiffs ultimately must present evidence of such a promise and consideration, it is sufficient to withstand a motion to dismiss that plaintiffs have alleged the existence of an enforceable promise offered "in exchange for valid consideration." *See id.* ¶ 52. Therefore, I will deny the motion to dismiss Counts III, IV, V and VIII.

2. Punitive damages in a contract action.

Defendants have moved to dismiss plaintiffs' claims for punitive damages for breach of contract. *See* Defs. Mot. at 7. In Pennsylvania, an action for breach of contract alone will not support an award of punitive damages. *See Johnson v. Hyundai Motor Amer.*, 698 A.2d 631, 639 (Pa Super. Ct. 1997). Punitive damages are only available following pleading and proof of an

independent tort. *See id.* Therefore, I will grant defendants' motion to dismiss the demands for punitive damages in Counts III (breach of contract), IV (specific performance) and VIII (injunctive relief).

D. Count VI: Intentional Infliction of Emotional Distress

In Count VI of the complaint, Reeve alleges that defendants committed the tort of intentional infliction of emotional distress ("IIED"). *See* Compl. ¶¶ 113-18.[7] A plaintiff must establish four elements to state a claim for IIED: (1) the conduct of the defendant must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) the conduct must cause emotional distress; and (4) the distress must be severe. *See Hoy v. Angelone, 720 A.2d 745, 753-54 (Pa. 1998); Clark v. Township of Falls, 890 F.2d 611, 623 n.8 (3d Cir. 1989); Chuy v. Philadelphia Eagles Football Club*, 595 F.2d 1265, 1273 (3d Cir.1979) (citing Restatement (Second) of Torts § 46 (1965)). As a preliminary matter, the court must determine if the defendants' conduct is extreme enough to warrant recovery. *See Cox v. Keystone Carbon Co*., 861 F.2d 390, 395 (3d Cir.1988).

Defendants argue that plaintiffs' allegations are not sufficiently outrageous as a matter of law. *See* Defs. Mot. at 8-10. Plaintiffs respond that wrongful accusations and false criminal

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[7] The Supreme Court of Pennsylvania has never decided whether an action for IIED is available under Pennsylvania law. *See Hoy v. Angelone*, 720 A.2d 745, 754 & n.10 (Pa. 1998); *Kazatsky v. King David Mem'l Park, Inc*., 527 A.2d 988, 988 (Pa. 1987). The Third Circuit, however, has predicted that the Pennsylvania Supreme Court will adopt the tort, and thus has recognized the availability of this cause of action in Pennsylvania. *See Clark v. Township of Falls*, 890 F.2d 611, 623 (3d Cir. 1989); *Williams v. Guzzardi*, 875 F.2d 46, 51 (3d Cir. 1989).

reports may be sufficiently outrageous to state a claim for IIED. *See* Pls. Resp. at 24-26.

First, plaintiffs overstate the case. In a number of other cases, both federal and state courts in Pennsylvania have rejected claims of intentional infliction of emotional distress premised on false criminal investigation or prosecution. *See, e.g., Wise v. City of Phila.*, No. 97-2651, 1998 U.S. Dist. Lexis 12149, *14-15 (E.D. Pa. July 31, 1998) (granting motion for summary judgment of officers accused of falsely representing that they had a warrant); *Jones v. Nissenbaum, Rudolph & Seinder*, 368 A.2d 770, 773-74 (Pa. Super. Ct. 1976) (affirming demurrer in favor of defendants accused of falsely threatening to use legal process to seize residential real property); *Clark*, 890 F.2d at 624 (reversing district court's denial of a motion for judgment as a matter of law by defendant employer accused of falsely investigating plaintiff and publishing investigatory files); *Motheral v. Burkhart*, 583 A.2d 1180, 1190 (Pa. Super. Ct. 1990) (affirming demurrer in favor of defendant accused of making false accusations to police officer that plaintiff engaged in criminal conduct).

Second, "Pennsylvania courts have been 'chary to declare conduct 'outrageous' so as to permit recovery.'" *See Clark*, 890 F.2d at 623; *Hoy*, 720 A.2d at 753. Generally, it is insufficient "that the defendant has acted with intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation that would entitle plaintiff to punitive damages for another tort." *See Hoy*, 720 A.2d at 754 (citing Rest. (2d) Torts § 46, cmt. d). Liability has been found only when the conduct "'is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.'" *See Hoy, 720 A.2d at 754; Clark, 890 F.2d at 623*. Neither the allegations

nor the exhibits to plaintiffs' complaint demonstrate that defendants' conduct as to Reeve was outrageous. Plaintiffs identify relevant communications in Exhibits J-R. At most, these exhibits support the proposition that defendants threatened criminal investigation of Reeve and published defamatory statements about Reeve. "These acts, while deplorable, do not constitute extreme and outrageous conduct as Pennsylvania has defined those terms." *See Clark*, 890 F.2d at 624.

Moreover, I note that in the employment context,"it is extremely rare to find conduct . . . that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress." *Cox v. Keystone Carbon*, 861 F.2d 390, 395 (3d Cir. 1988).[8] It is not "outrageous" and "utterly intolerable" conduct for one board member to question the propriety and legality of the acts of another. In *Clark*, the Third Circuit held that a police officer plaintiff failed to state a claim of IIED when he alleged that his superiors, two

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[8] Plaintiffs' allegation that defendants "published these false, vindictive and defamatory statements in retaliation for Chair Reeve's decision not to act against Messrs. Goldberg and Carter" is not helpful to plaintiffs. *See* Compl. ¶ 61. I recognize that in an IIED claim growing out of a charge of sexual harassment and retaliation, the Pennsylvania Supreme Court has explained that "[r]etaliatory conduct is typically indicative of discrimination of a more severe nature and usually has a greater detrimental impact upon the victim." *See Hoy*, 720 A.2d at 754. I also recognize that retaliatory threats of physical injury may support a claim for IIED. *See Denton v. Silver Stream Nursing & Rehab. Ctr.*, 739 A.2d 571, (Pa. Super. Ct. 1999) (holding that a plaintiff alleging retaliation stated a claim where plaintiff alleged facts supporting an inference that her employer supported and condoned death threats against her in retaliation for her aid of an external investigation and her refusal to resign her employment). I find, however, neither applicable to this matter.

First, this case does not implicate the balance of power issues present between an employer and an employee. Second, plaintiffs' allegations more closely resemble those in *Clark*. In *Clark*, the Third Circuit granted judgment as a matter of law to defendants accused of retaliating against an employee who objected to his supervisor's performance, by subjecting him to criminal investigation and publication of disparaging reports in the local area. *See Clark*, 890 F.2d at 624. Plaintiffs' allege conduct no more outrageous than the conduct in *Clark*. Therefore, the cursory reference to retaliation is insufficient to withstand the motion to dismiss the claim.

public officials with whom he had a long-standing and acrimonious dispute about police department operations, falsely initiated a criminal investigation of his conduct and published "disparaging reports" about him. *See Clark*, 890 F.2d at 624. Plaintiffs' allegations and inferences therefrom are no worse.

Third, the numerous and documented allegations in the complaint fail to demonstrate conduct of a similar kind or nature to that in the cases on which plaintiffs rely. See Pls. Resp. at 25-26 (citing *Gilbert v. Feld*, 788 F. Supp. 854, 862 (E.D. Pa. 1992) (holding that complaint alleging successive false and misleading criminal reports resulting in successive arrests and prosecutions stated a claim for intentional infliction of emotional distress), *Banyas v. Lower Bucks Hosp.*, 437 A.2d 1236 (Pa. Super. Ct. 1981) (holding that plaintiff stated a claim against physicians who, to cover their own negligence, intentionally falsified records attributing the death of a patient solely to plaintiff), and *Chuy v. Philadelphia Eagles Football Club*, 595 F.2d 1265, 1274 (3d Cir. 1979) (holding that plaintiff stated a claim for IIED against team physician who reported falsely to the national press that the player suffered from a rare and potentially fatal blood disease)). In *Gilbert*, the plaintiff alleged that he was twice falsely charged with a crime, arrested, and incarcerated. *See Gilbert*, 788 F. Supp. at 857-58.[9] In *Chuy*, the Third Circuit held that a doctor's false representations to the press that an athlete had a rare blood disease were sufficiently outrageous to state a claim for IIED. *See Chuy, 595 F.2d at 1274*. The court noted the national scale of the publication and to the "intolerable professional conduct" of the

[9] Moreover, on defendants' subsequent motion for summary judgment in *Gilbert*, judgment was entered in favor of the defendants where the allegations were supported by probable cause and no facts surrounding the investigation or prosecution demonstrated outrageous conduct. *See Gilbert v. Feld*, 842 F. Supp. 803, 821 (E.D. Pa. 1993).

physician. *Chuy*, 595 F.2d at 1274. Finally, the *Banyas* court was confronted by evidence that physicians covered up their own negligent medical treatment and falsified records indicating that the defendant only was responsible for the death of the victim. *See Banyas*, 437 A.2d at 1238. As a result of the falsified records, the plaintiff was charged with murder and several other felonies. *See id.* On those facts, the court identified the false misrepresentations as "intolerable professional conduct" by physicians. *See Banyas*, 437 A.2d at 1239.

I conclude that defendants' conduct here is not so personal, persistent, pervasive or professionally intolerable as the conduct found in the cases on which plaintiffs rely. Rather, defendants' alleged conduct is limited to PMI board-related business and does not implicate incarceration, infirmity, or intolerable standards of professional conduct as found in other cases. It is insufficient as a matter of law to demonstrate conduct either "atrocious" or "utterly intolerable in a civilized society." *See Clark*, 890 F.2d at 623 (citations omitted). Therefore, I will grant defendants' motion to dismiss Count VI of the complaint.

CONCLUSION

Plaintiffs allege that defendants published a series of defamatory statements regarding plaintiffs, breached an agreement not to pursue the allegedly defamatory allegations, and initiated a harassing criminal investigation of plaintiffs. Plaintiffs' 131-paragraph complaint contains eight demands for "in excess of $1,000,000," and refers to defendants as "irrational" and "vindictive." Defendants moved to strike both the ad damnum clauses and scandalous matter from the complaint. Because the demands for specific dollar amounts are in violation of Local

Civil Rule 5.1.1, I will grant defendants' motion to strike those clauses. Because defendants have not alleged any prejudice from the language of the complaint, I will deny the motion to strike scandalous matter.

Defendants motion also sought dismissal of seven of the eight counts of the complaint for failure to state claims upon which relief may be granted. Because counts I and VII of the complaint seek relief under a theory of defamation, not a theory of trade disparagement, I will deny the motion to dismiss those counts. Because plaintiffs have alleged facts which, if proved, demonstrate the mutual agreement that an offer was accepted in exchange for valid consideration, I will deny the motion to dismiss counts III, IV, V and VIII on the ground that plaintiffs have pleaded and may prove the existence of a valid and binding contract. Because an action for breach of contract alone will not support an award of punitive damages, I will grant the motion to dismiss the claims for punitive damages in counts III, IV and VIII. Finally, because plaintiffs fail to allege facts sufficiently outrageous to state a claim for intentional infliction of emotional distress, I will grant the motion to dismiss count VI.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROJECT MANAGEMENT INSTITUTE, INC. and HAROLD REEVE, Plaintiffs, v. LEWIS IRELAND and LEWIS IRELAND & ASSOCS., INC., Defendants.	: : : : : : : :	CIVIL ACTION NO. 99-4891

Order

And now, this day of April, 2000, upon consideration of plaintiffs' Complaint (Doc. No. 1), defendants' Motion to Strike and Motion to Dismiss Plaintiffs' Complaint (Doc. No. 4), and plaintiffs' Response in Opposition thereto (Doc. No. 7), it is hereby ORDERED that:

1. The motion to strike ad damnum clauses in the Complaint is GRANTED;

2. The motion to strike scandalous matter from the Complaint is DENIED;

3. The motion to dismiss Count VI (intentional infliction of emotional distress) is GRANTED;

4. The motion to dismiss claims for punitive damages in Counts III, IV and VIII is GRANTED; and

5. The motion to dismiss plaintiffs' complaint in all other respects is DENIED.

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William H. Yohn, Jr., Judge